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No. 86-104

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1986

THE BOARD OF AIRPORT COMMISSIONERS
OF THE CITY OF LOS ANGELES, et al.,
Petitioners,

VS.

JEWS FOR JESUS, INC., AND ALAN HOWARD SNYDER,
a.k.a. AVI SNYDER
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE PETITIONERS

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QUESTIONS PRESENTED FOR REVIEW

1. Have Petitioners constitutionally limited the uses of the interiors of the terminal facilities at Los Angeles International Airport to their dedicated and intended airport-related purposes or are those facilities traditional public forums or have they been opened as public forums such that Petitioners are required to permit their use for non-airport related activities?

2. If the interiors of the terminal facilities at Los Angeles International Airport are not public forums, is the Petitioners' policy that limits the uses of those facilities to airport-related purposes a reasonable exercise of their right to reserve the uses of the terminal facilities to their dedicated and intended airport-related purposes?

LIST OF ALL PARTIES

Petitioner Board of Airport Commissioners of the City of Los Angeles ("Board") is charged by the Los Angeles City Charter with the management and control of the Los Angeles Department of Airports and the Los Angeles International Airport; Petitioner Johnnie L. Cochran, Jr. was the President of the Board and presently is a member of the Board; Petitioners Robert A. Chick, Maria D. Hummer and Samuel Greenberg were and presently are members of the Board; D.A. "Curt" Curtiss was a member of the Board at the time the initial action was brought but has since resigned the position and was replaced by Petitioner Jerry B. Epstein. Petitioner City of Los Angeles is a municipal corporation and the owner of the real property and facilities that comprise Los Angeles International Airport.

Respondent Jews for Jesus, Inc., is a California nonprofit religious corporation; Respondent Alan Howard Snyder, a.k.a. Avi Snyder, is a member and minister of the Jews for Jesus organization.

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BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The Opinion of the Court of Appeals is reported in 785 F.2d 791 (9th Cir. 1986). (Cert. Pet., App. B.)

The Memorandum Decision and Judgment of the District Court was not reported. (Cert. Pet., App. A.)

JURISDICTION

The Judgment of the Court of Appeals was entered on March 25, 1986. An extension of time within which to file a Petition for Writ of Certiorari to and including July 23, 1986, was granted by the Honorable William H. Rehnquist. The Petition for Writ of Certiorari was granted on October 6, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

The jurisdiction of this case in the District Court was based upon 28 U.S.C. §§ 1331, 1343(3).

CONSTITUTIONAL, STATUTORY, ETC., PROVISIONS INVOLVED

(1) The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

(2) Title 42 U.S.C. § 1983 provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia

> shall be considered to be a statute of the District of Columbia. R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 83 Stat. 1284."

(3) The Los Angeles Board of Airport Commissioners Resolution No. 13787 that is the subject matter of this litigation is set forth in the Joint Appendix.

STATEMENT OF THE CASE

This case involves the constitutionality of the Board of Airport Commissioners' ("Petitioners") Policy that limits the uses of the interiors of airport terminal facilities at Los Angeles International Airport ("Airport" or "LAX") to airport-related purposes only. (J.A. 1a-6a, 17a.) Petitioners' Policy ("Policy") can be summarized as follows:

> "The Los Angeles International Airport shall be limited to airport-related uses only except that the sidewalk areas immediately outside of the terminal facilities may be used for activities protected by the First Amendment." (J.A. 1a-6a, 17a.)

The facts in this case are not in dispute. Airport is owned by the City of Los Angeles and operated by the Department of Airports, which is under the management and control of the Petitioners. (J.A. 7a.) The duties and obligations of the Board and the Department's General Manager are set forth in the Los Angeles City Charter ("Charter"), which requires the Department to operate all of its properties for the promotion and accommodation of air commerce and air navigation or uses incidental thereto. (J.A. 9a-10a.) In other words, the Board and its Department are required by the Charter to devote airport property exclusively to those activities that aid the traveling public (J.A. 10a.)

Respondent Jews for Jesus is a religious organization that wishes to advance its religious cause by having its

members distribute religious pamphlets in the interiors of the terminal facilities at Airport. When Respondent's members were prevented from conducting their non-airport related activities in the interiors of the terminal facilities, Respondent Jews for Jesus and one of its ministers filed suit to enjoin the enforcement of Petitioners' Policy claiming the interiors of the terminal facilities at Airport were public forums.

LAX is the third busiest airport in the world, handling more than 32 million passengers in 1982 and 33 million passengers in 1983. (J.A. 9a.) At least a similar number of "meeters and greeters" enter LAX to pick up or drop off airline passengers. (J.A. 9a.)

LAX is the largest destinational airport in the world with the largest number of enplaning and deplaning passengers. (J.A. 9a.) Approximately 75 percent of the 32 million passengers who used LAX in 1982 either commenced or ended their flight travel at LAX. (J.A. 9a.) Accordingly, at least 75 percent of all passengers arriving at or departing from LAX must use the sidewalks in front of the terminal facilities. (J.A. 9a.) Due to the dedicated uses of LAX, the large demand for space within the terminal facilities, and the Charter obligations, the Board has had a consistent policy of allowing in the terminal facilities only those activities that directly aid the traveling public. (J.A. 11a.)

The Central Terminal Area of Airport (hereinafter "CTA"), contains eight terminal facilities, the parking structures and lots, and a series of private streets and roadways that provide ingress and egress to the various services in the CTA. (J.A. 7a.) The major private roadway in the CTA is World Way, a double-leveled, U-shaped roadway providing ingress and egress to the CTA. (J.A. 7a-8a.)

Each of the eight terminal facilities contains ticketing areas, baggage claim areas, check-in gates, loading gates, restaurants, newsstands, gift shops, flight insurance counters, rent-a-car counters, information counters, and general waiting areas. (J.A. 7a-8a.) Some of the terminals have offices and privately provided waiting areas on the level above the aircraft loading level in the satellite buildings. (J.A. 8a.)

Several construction projects at LAX designed to reduce the vehicular and pedestrian congestion within the CTA have recently been completed. (J.A. 8a.) Generally speaking, a departing passenger will arrive at LAX on the second level, cross the sidewalk, enter into the ticketing area, and then proceed to the loading gates and the aircraft. (J.A. 8a.) A passenger arriving at LAX will enter the satellite area, proceed to the lower level to claim any baggage and then proceed to the sidewalk and street area. (J.A. 8a.)

Airport is designed and operated with the sole purpose of aiding the traveling public by providing the services necessary to arriving or departing passengers. The Board consistently has limited the activities within the CTA to those that will directly aid the traveling public and this limitation consistently has been applied to all who have requested permission to conduct activities at Airport. (J.A. 11a, 15a, 17a.) Thus, the Board has refused permission to conduct non-airport related activities within the terminal facilities to such groups as the Red Cross, the Salvation Army, the Girl Scouts, the Boy Scouts, the Ford Motor Company, Iran Relief Fund, the Hunger Campaign, KCET, the Women's Sports Foundation, and a host of other charitable, religious, and commercial enterprises. (J.A. 15a.) The general public is not denied entrance into the terminal facilities. (J.A. 13a.) Likewise,

Petitioners do not have or enforce a dress code for persons entering the terminal facilities. (J.A. 13a.)

Respondent Jews for Jesus is a non-profit religious organization and Respondent Alan Snyder is a minister for that organization. (J.A. 17a.) Respondents wished to advance their religious cause by distributing religious pamphlets in the interiors of the terminal facilities at Airport. Respondents were informed of the Petitioners' Policy restricting the uses of the interiors of the terminal facilities to airport-related purposes only and were told to stop conducting their religious activities within the terminals. (J.A. 19a.) After Respondents were prevented from pamphleteering within the terminal facilities (but not on the sidewalks outside), they filed the present action to enjoin enforcement of Petitioners' Policy.

Respondents were not and have not been prevented from using the interiors of the terminal facilities at Airport for their own travel-related purposes. Rather, Respondents were deterred from using those facilities for their non-airport related, religiously related purposes. (J.A. 19a.) Likewise, Respondents were not prevented from using the sidewalk areas outside the terminal facilities at Airport for their religious distribution efforts. Further, there is no indication or allegation that Respondents were singled out because of their particular message. (J.A. 15a.) Rather, Respondents are just one of the many charitable groups, religious organizations and commercial enterprises that have been denied use of the interiors of the terminal facilities at Airport because those activities would neither advance air navigation nor directly aid the traveling public. (J.A. 11a, 15a.)

The District Court for the Central District of California, on stipulated facts, treated the parties' trial briefs as cross motions for summary judgment and, in an unpublished memorandum decision, declared the Petitioners'

Policy unconstitutional and enjoined its enforcement. In so deciding, the District Court determined that the interiors of the airport terminal facilities at Airport were public forums (probably traditional public forums). (Cert. Pet., App. B.)

The Court of Appeals for the Ninth Circuit, in its Opinion, affirmed the judgment of the District Court and held that the terminal facilities at Airport were traditional public forums and, accordingly, could only be limited by time, place and manner restrictions. (Cert. Pet., App. A.)

SUMMARY OF ARGUMENT

The determinative issue in this case is whether the airport terminal facilities at LAX are public forums. The answer to this question will determine whether the Petitioners can operate their Airport solely and exclusively as an airport, prohibiting its use for non-airport related activities, or whether Petitioners must allow non-airport related activities within its terminals. If the interiors of the terminal facilities are not public forums, Petitioners legally can limit the uses of the facilities to their intended and dedicated airport-related purposes. If the interiors of those facilities are traditional public forums or have been opened by Petitioners as public forums, then non-airport related activities protected by the First Amendment must be allowed within the terminals restricted only by "time, place and manner restrictions."

A. The Interiors of the Terminal Facilities at Airport Are Not Traditional Public Forums

Traditional public forums are those places that by long tradition or by government fiat have been devoted to assembly and debate. *Perry Ed. Assn. v. Perry Local Ed. Assn.*, 460 U.S. 37, 45, 74 L.Ed.2d 794, 103 S.Ct. 948

(1983). A principal purpose of a traditional public forum is the free exchange of ideas. *Cornelius v. N.A.A.C.P.,* 53 U.S.L.W. 5116, 5119, 473 U.S. ____, ____, 87 L.Ed.2d 567, 580, 105 S.Ct. 3439 (1985).

Traditional public forums "have immemorially been held in trust for use by the public and . . . have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions." *Hague v. C.I.O.,* 307 U.S. 496, 515, 83 L.Ed. 1423, 59 S.Ct. 954 (1939). Streets, sidewalks, and parks are prime examples of public forums because of their historical association with and dedication to the exercise of expressive activities. *U.S. v. Grace,* 461 U.S. 171, 177, 75 L.Ed.2d 736, 103 S.Ct. 1702 (1983). In order for a government-owned facility to be a traditional public forum, there must exist "a traditional right of access . . . for purposes of . . . communication comparable to that recognized for streets and parks . . ." *City Council v. Taxpayers for Vincent,* 466 U.S. 789, 814, 80 L.Ed.2d 772, 104 S.Ct. 2118 (1984).

The principle purposes of airport terminal facilities are to promote air transportation and to aid the traveling public. They do not have as their principal purpose the free exchange of ideas. The exclusive purposes of LAX are to promote air navigation and to aid the traveling public. The government fiat regarding Airport is set forth in the Charter, which requires that the airport property be used solely and exclusively for its intended airport-related functions. (J.A. 9a-10a.) There is no dedication to, or traditional right of access for, communicative purposes at LAX. Without that dedication or long tradition of use for communicative purposes, a government-owned facility is not a traditional public forum and can be reserved for its intended purposes.

Likening the physical characteristics of streets and sidewalks to the interior hallways of terminal facilities

does not establish that these facilities have a traditional right of access for communicative purposes similar to that recognized in streets and parks. *City Council v. Taxpayers for Vincent, supra,* at p. 814; *Greer v. Spock,* 424 U.S. 828, 47 L.Ed.2d 505, 96 S.Ct. 1211 (1976). The interiors of the terminal facilities at LAX are clearly distinguishable from those open sidewalks and parks that by long tradition have been devoted to assembly and debate. Without a traditional dedication to speech activities, a government facility clearly designed, dedicated and intended for non-communicative purposes is not a traditional public forum.

B. The Interiors of the Terminal Facilities at Airport Have Not Been Opened as First Amendment Forums But, Rather, Have Been Limited to Their Intended Dedicated Purposes.

Petitioners have the right "to preserve the property under its control for the use to which it is lawfully dedicated." *U.S. Postal Service v. Greenburgh Civic Assn.* 453 U.S. 114, 129, 69 L.Ed.2d 517, 101 S.Ct. 2676 (1981). Furthermore, a government is not required to open all of its facilities for unrelated public expression. *U.S. v. Grace, supra,* at pp. 177-178.

The important factor in determining whether a government-owned facility has been opened as a public forum is the intent of the government operator. It is this intent that distinguishes a government facility that has been opened as a public forum from one that has been reserved for its non-forum purposes. This Court has explained that: "[t]he government does not create a public forum by inaction or by permitting limited discourse but *only by intentionally opening* a non-traditional public forum *for public discourse.*" *Cornelius v. N.A.A.C.P., supra,* at p. 5120, L.Ed.2d at p. 580. (Emphasis added.) Furthermore, this Court in *Cornelius* stated that "[w]e will not

find a public forum has been created in the face of clear evidence of a contrary intent . . . ." *Cornelius v. N.A.A.C.P., supra*, at p. 5120, L.Ed.2d at p. 580.

Petitioners in this case neither intentionally nor unintentionally have opened the interiors of the terminal facilities at Airport for public discourse. Petitioners' intent to limit the facilities to their intended airport-related purpose is clear from their long-standing policy reaffirmed by the resolution at issue in this case. (J.A. 11a, 17a.) Petitioners' intent is also clear from their actions in allowing or disallowing certain activities within the terminal facilities. (J.A. 11a, 15a, 17a.) Petitioners are required to and have limited the uses of the terminal facilities at Airport to their dedicated and intended airport-related purposes. (J.A. 9a-10a.) In light of this clear dedication and use of the interiors of the terminal facilities, it cannot be said that Petitioners intended to or did open the facilities at LAX as public forums for expressive activities and, therefore, this Court should not find that a public forum has been created.

The fact that certain activities protected by the First Amendment have occurred or have been permitted within the facilities does not serve to convert those facilities into public forums. *Greer v. Spock, supra*, at p. 438, n. 10. This Court said in *Perry Ed. Assn. v. Perry Local Ed. Assn., supra*, at p. 47, that there must be a showing of "indiscriminate use" for unrelated activities or that "permission has been granted as a matter of course to all who seek to distribute material" before a facility will have been deemed to have been opened as a public forum.

In the present case, permission to conduct non-airport related activities has been denied as a matter of course. (J.A. 11a, 15a, 17a.) No permission has been given to conduct any non-airport related activity within the terminal facilities. Furthermore, Petitioners have clearly in-

tended to limit the airport terminal facilities to their intended and dedicated purposes. The Petitioners' Policy limiting the uses of the interiors of the terminal facilities to airport-related purposes and the Petitioners' practice of denying permission to conduct non-airport related activities within those facilities make it abundantly clear that the interiors of the terminal facilities at LAX have not been opened as public forums. See *Cornelius v. N.A.A.C.P., supra.*

C. Limiting the Uses of the Interiors of Terminal Facilities to Their Intended and Dedicated Airport-Related Purposes Only is Reasonable.

This Court has repeatedly stated that: "[p]ublic property which is not by tradition or designation a forum for public communication may be reserved by the state 'for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.' " *City Council v. Taxpayers For Vincent, supra,* at pp. 814-815.

The decision to restrict access need not be the most reasonable or the only reasonable limitation. *Cornelius v. N.A.A.C.P., supra,* at p. 5121. When reviewing a limitation on access, this Court has recognized that the government operator of a non-forum facility must have sufficient latitude to make reasonable decisions and distinctions if it is to operate its facilities for their intended non-communicative purposes. *U.S. Postal Service v. Greenburgh Civic Assn., supra,* at p. 133; *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 49.

The interiors of the terminal facilities at Airport are not public forums and, therefore, Petitioners have a right to limit the uses of those facilities to their intended purposes. Petitioners have exercised this right by limiting

the activities within the terminal facilities to those that directly aid the traveling public. Petitioners urge this Court to find that such a limitation is reasonable.

A large number of groups and individuals wish to use the interiors of the terminal facilities at LAX to achieve their non-airport related objectives. (J.A. 15.) The reasonableness of and justification for the Policy must be analyzed with the recognition that Airport's functions would be seriously disrupted by the activities of all the groups who wish to use the terminal facilities to expound their views on a myriad of subjects. *Heffron v. ISKCON,* 452 U.S. 640, 652-653, 69 L.Ed.2d 298, 101 S.Ct. 2559 (1981); *City Council v. Taxpayers for Vincent, supra,* at p. 793; *Clark v. Community for Creative Non-Violence,* 468 U.S. ____, ____, 82 L.Ed.2d 221, 229, 104 S.Ct. ____ (1984). In addition, it is abundantly reasonable for Petitioners to exercise their right to restrict the uses of the facilities to their intended purposes rather than opening those facilities to all uses and waiting "until havoc is wreaked" before imposing any limitation on the uses of those facilities. *Cornelius v. N.A.A.C.P., supra,* at p. 5122, L.Ed. 585.

ARGUMENT

At issue in this case is the constitutionality of the Petitioners' Policy and practice of limiting the uses of the interiors of airport terminal facilities at Airport to airport-related activities only. Petitioners prohibit the use of the interiors of the terminal facilities for all non-airport related activities, including non-airport related activities that are protected by the First Amendment. Petitioners believe that it is entirely reasonable to limit the uses of the facilities under their control to their intended and dedicated airport-related purposes. Respondents, how-

ever, wish to use the interiors of the terminal facilities for their non-airport related, religious purposes.

The determinative issue in this case is whether the interiors of the terminal facilities at Airport are public forums. If the interiors of the terminal facilities are not public forums, those areas can be reserved for their intended purposes and any limitations on the use of those facilities need only be reasonable. If, however, the interiors of the terminal facilities are public forums, the Petitioners cannot reserve those facilities to their intended and dedicated purposes only but, instead, must allow protected, non-airport related activities (including Respondents' religious activities) to occur within the facilities limited only by "time, place and manner restrictions." Petitioners believe that the interiors of the terminal facilities at LAX are not public forums and that their Policy limiting the uses of those facilities to airport-related purposes only is entirely reasonable.

In deciding this case, it is also important to recognize what issues are not involved. This case does not involve censorship, prior restraints, discriminatory treatment or the review of a time, place and manner restriction. This case also does not involve a situation where Petitioners have used the interiors of the terminals to express their own views on a particular subject while prohibiting the expression of any contrary views. Furthermore, there is no claim that Petitioners' Policy was aimed at Respondents' particular views or that the Policy has been unevenly applied.

A. The Interiors of Terminal Facilities Are Not Traditional Public Forums

Traditional public forums are those places that "have immemorially been held in trust for use by the public and, time out of mind, have been used for purposes of assem-

bly, communicating thoughts between citizens, and discussing public questions." *Hague v. C.I.O., supra*, at p. 461. Traditional public forums are those places that by long tradition or by government fiat have been devoted to assembly and debate. *Perry Ed. Assn. v. Perry Local Ed. Assn., supra*, at p. 45. Generally speaking, open streets, sidewalks and parks are prime examples of public forums because of their historical association with and dedication to the exercise of expressive activities. *U.S. v. Grace, supra*, at p. 177. Not all streets and sidewalks, however, are traditional public forums. *Greer v. Spock, supra*, at pp. 836-837. Likewise, even government-owned or operated facilities that have a communicative purpose as a prime function are not necessarily traditional public forums. *U.S. Postal Service v. Greenburgh, supra*, at pp. 128-130. See also *Perry Ed. Assn. v. Perry Local Ed. Assn., supra*, at pp. 46-47.

In order to establish that a public facility is a traditional public forum, there must exist "a traditional right of access . . . for purposes of . . . communication comparable to that recognized for streets and parks . . ." *City Council v. Taxpayers for Vincent, supra*, at p. 814. Without such a right of access for communicative purposes, a government facility, particularly one dedicated to non-communicative purposes, will not become a traditional public forum. *U.S. Postal Service v. Greenburgh Civic Assn., supra*, at pp. 128-129.

Publicly owned property does not become a public forum simply because it is owned or controlled by the government. *U.S. Postal Service v. Greenburgh Civic Assn.*, 453 U.S. 114, 129, 69 L.Ed.2d 517, 101 S.Ct. 2676 (1981). The fact that the public is freely admitted to the property does not make a facility a public forum. *Greer v. Spock, supra*, at pp. 830, 838 and n. 10. Even occasional occurrences of speech or expressive activities within the facility

do not make that facility a traditional public forum. *Greer v. Spock, supra*, at p. 838, n. 10. See also *Perry Ed. Assn v. Perry Local Ed. Assn., supra*, at p. 47.

A principal purpose of a traditional public forum is the free exchange of ideas. *Cornelius v. N.A.A.C.P., supra*, at p. 5119, L.Ed.2d 578. The fact "that government property can be used as a vehicle for communication does not mean that the Constitution requires such uses to be permitted." *City Council v. Taxpayers for Vincent, supra*, at p. 814.

The purposes of an airport terminal are obviously to accommodate air transportation and to assist the traveling public. An airport does not have as a principal purpose, a long tradition of or a dedication to public assembly and debate. The exclusive purposes of LAX are to promote air navigation and to aid the traveling public. These exclusive purposes are mandated by the Charter. This government fiat requires the property to be used only for airport-related purposes unless there is a specific finding that the property is not needed for that purpose. (J.A. 9a, 10a.) Petitioners obviously believe that the interiors of the terminal facilities are needed for their transportation-related functions. The dedication and tradition of the terminal facilities are to intended airport-related activities and not to assembly for expressive purposes.

Respondents have attempted to prove that the interiors of the terminal facilities are traditional public forums by likening the physical characteristics of sidewalks to the interior hallways of the terminal facilities at Airport. (Brief in Opposition to Petition for Certiorari, p. 12.) If such a comparison between streets and hallways were all that was needed to transform a government facility into a traditional public forum, then most, if not all, hallways in government facilities would become traditional public forums.

It is not the physical similarities or dissimilarities to sidewalks and parks that are important in determining whether a particular place is a traditional public forum; rather, Respondents must establish that a particular facility has a traditional right of access for communicative purposes similar to that recognized in streets and parks. *City Council v. Taxpayers for Vincent, supra*, at p. 814. Respondents in this case have not shown any traditional right of access for communicative purposes and thus have not established that the interiors of the terminal facilities at Airport are traditional public forums. This conclusion is clearly supported by *Greer v. Spock, supra*, wherein this Court found that exterior sidewalk areas of a military base were not to be treated the same as a municipality's open streets and parks. The interiors of the terminal facilities at Airport clearly are even more distinguishable from those open sidewalks and parks that by long tradition have been devoted to assembly and debate than the areas involved in *Greer*. Without a traditional dedication to speech activities, a government facility clearly designed, dedicated and intended for non-communicative purposes is not a traditional public forum.

It is clear from the above discussion that the interiors of the airport terminal facilities at LAX, dedicated and used for their transportation functions, do not have a dedication to communications comparable to that recognized in open streets and parks. There is no traditional right of access to the terminal facilities at LAX for communicative purposes or for public debate. Airport is designed, dedicated and used solely for airport-related purposes and is clearly not a traditional public forum.

The Ninth Circuit erroneously concluded that the interiors of the terminal facilities at Airport are traditional public forums. The Ninth Circuit chose to ignore the clear principles set forth by this Court and to rely instead on

older, lower court cases that considered public ownership, public admission, and the fact that the terminal facilities at Airport could be used for communicative purposes in deciding whether a public forum at Airport existed. The Ninth Circuit's findings and Respondents' argument that the interiors of terminal facilities at LAX are traditional public forums fly in the face of the conclusions reached by this Court regarding traditional public forums.

B. Petitioners Have Not Opened the Interiors of the Terminal Facilities at Airport as Public Forums But, Rather, Have Reserved Them for Their Intended Purposes.

This Court has repeatedly recognized that "[t]he State, no less than a private owner of property, has the power to preserve the property under its control for the use to which it is lawfully dedicated." *Greer v. Spock, supra,* at p. 836; *Adderley v. Florida,* 385 U.S. 39, 48, 17 L.Ed.2d 149, 87 S.Ct. 242 (1966); *U.S. Postal Service v. Greenburgh Civic Assn., supra,* at p. 129; *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 46. No government is required to open all of its facilities for unrelated public expression. *U.S. v. Grace, supra,* at pp. 177-178.

The important factor in determining whether a government facility has been opened as a public forum is the intent of the government operator. *Cornelius v. N.A.A.C.P., supra,* at p. 5120, L.Ed.2d at p. 580. This intent is the key in distinguishing between a government facility that has been opened as a public forum and one that has been reserved for its intended purposes. This Court clearly has stated that "[t]he government does not create a public forum by inaction or by permitting limited discourse but *only by intentionally opening* a non-traditional public forum *for public discourse.*" *Cornelius v. N.A.A.C.P., supra,* at p. 5120, L.Ed.2d at p. 580. (Emphasis added.) In order to determine the government's in-

tent, the courts look to the government's policy and practice. *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 47. When necessary, the courts have looked at the nature of the facility and its compatibility with expressive activity in order to determine the government's intent. *Cornelius v. N.A.A.C.P., supra,* at p. 5120. This Court clearly explained, however, that "[w]e will not find a public forum has been created in the face of clear evidence of a contrary intent . . . " *Cornelius v. N.A.A.C.P., supra,* at p. 5120.

In this case, the government's intent could not be clearer. Airport property is to be used only for those activities that accommodate air commerce and air navigation. The Charter mandates that Airport be operated only for airport-related purposes. (J.A. 9a, 10a.) The Petitioners have adopted and reaffirmed a clear policy that requires the terminal facilities at Airport to be used for airport-related purposes only. (J.A. 11a, 17a.) Finally, Petitioners' practice has been to permit only those activities they believe directly aid the traveling public within the terminal facilities (J.A. 11a), and to deny all other uses. (J.A. 15a.) Thus, it is clear that the Petitioners intended to preserve and have preserved their property to its lawfully dedicated purposes and that Petitioners never intended to open nor ever have opened the terminal facilities at LAX for public discourse and debate.

The interiors of the terminal facilities at LAX are dedicated to their intended airport-related purposes. They are not dedicated to or designed for communicative purposes but, rather, are limited to the purposes of accommodating air transportation and aiding the traveling public. This Court has recognized that " . . . where government property is not dedicated to open communication the government may — without further justification — restrict use to those who participate in the forum's

official business." *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 53. [Fn. omitted.] Petitioners' Policy is not only legally permissible, it is also mandated by the Charter by which the Petitioners are governed.

Petitioners do not deny Respondents their right to use the interiors of the terminal facilities at LAX for airport-related purposes. Rather, Petitioners deny Respondents, and all others, the use of the interiors of the facilities for their particular non-airport related purposes. (J.A. 11a, 15a, 17a.) Restricting the uses of the interiors of a government facility, dedicated to non-communicative purposes, is constitutional and nothing more than an exercise of Petitioners' right to preserve their property to airport-related purposes only. See *Greer v. Spock, supra,* at p. 836; *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 46.

Regardless of Petitioners' clear Policy limiting the interiors of the terminal facilities to airport-related purposes only, Respondents argue that the facilities have been opened because Petitioners have permitted, or at least do not prohibit, certain activities protected by the First Amendment within the terminals.[1] (Brief in Opposition to Petition for Certiorari, pp. 13-14.) This argument is faulty for a variety of reasons. Most, if not all, of the activities cited by Respondents are obviously airport-related. When the nature and purpose of the activities are analyzed, it is abundantly clear that those activities are

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[1]Respondents cite their use of the terminal facilities, art work decorating the terminals, an endangered species display, information booths, a reading room, and a picture of the City's Mayor as examples of First Amendment activities that have been permitted. (Brief in Opposition to Petition for Certiorari, p. 14.) In addition, Respondents cite the fact that the clothing individuals wear within the terminals has not been regulated and persons can walk through the terminals with various slogans on their clothing.

consistent with operating an airport and aiding the traveling public. Decorating a terminal, just like building a terminal, is airport-related even though art work may be protected by the First Amendment. Likewise, the existence of an "endangered species display" in the International Terminal with the admonition to "Think Before You Buy" is nothing more than a warning to the international traveler that the importation of certain goods made from endangered species is illegal. This is as clear an aid to the traveling public as are other signs within the terminals informing passengers of emergency exits, of regulations regarding explosives on airplanes, or of a myriad of other "do's and don'ts."

Providing information booths within the terminals, even though the information provided may be protected by the First Amendment, can hardly be viewed as a non-airport related activity or as an expression of the Petitioners' intent to open its facilities to religious, political or other non-airport related activities. Respondents' argument that the existence of a quiet reading room leased by the Christian Scientists within the terminals establishes an opening of the terminal facilities ignores the obvious fact that waiting areas are a necessary adjunct to a terminal facility. Thus, much of Respondents' recital of various activities that occur in the terminals and that could be deemed expressive is consistent with the airport uses for which the terminals were designed and to which they are dedicated.

Respondents also argue that people may enter the terminals wearing clothing imprinted with slogans and that Petitioners have not tried to prevent such activity, even though the person wearing the clothing may be trying to make a statement. (Brief in Opposition to Petition for Certiorari 14.) While it is true that Petitioners do not enforce a dress code within the terminal

facilities or examine a person's intentions when he or she wears clothing with a slogan, such inaction in this area could not by any stretch of the imagination be an example of the Petitioners' intent to open the interiors of the airport terminal facilities as public forums. Likewise, Respondents' prior use of the terminal facilities for distribution activity, without the express or implied consent of Petitioners (J.A. 15a), does not open the interiors of the terminal facilities as public forums because "[t]he government does not create a public forum by inaction or by permitting limited discourse but only by intentionally opening . . ." a facility as a forum for public discourse. *Cornelius v. N.A.A.C.P., supra*, at p. 5120.

Assuming arguendo that each of the activities cited by Respondents was a non-airport related expressive activity permitted by Petitioners, Respondents still have failed to show that the terminal facilities have been opened as public forums for their religious activities. *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 47, explains that there must be an opening of the facility for indiscriminate use by the general public. Here, just as in *Perry*, "[t]here is no court finding or evidence in the record which demonstrates that this permission [to use the system to communicate] has been granted as a matter of course to all who seek to distribute material." In this case, the record clearly establishes that permission to use the interiors of the terminal facilities at LAX for non-airport related purposes has been denied as a matter of course (J.A. 15a), and that, as a matter of course, only those activities that are believed to be airport-related are permitted. (J.A. 11a, 17.) The fact that some activities that could be deemed to be expressive activities have occurred in the terminals does not, by itself, convert those terminal facilities into public forums. *Greer v. Spock, supra*, at p. 838, n. 10. *Jones v. North Carolina Prisoners'*

Union, 433 U.S. 119, 134-135, 53 L.Ed.2d 629, 97 S.Ct. 2532 (1977).

Respondents' list of "expressive activities" that have occurred within the terminals cannot justify a finding that Petitioners intended to, or in fact did, open the interiors of those terminals as public forums. The "expressive activities" referred to by Respondents occur, in one form or another, in every building. If that were all that was necessary to convert a government facility dedicated to non-communicative purposes into a public forum, every government building would be a public forum and a government would never be able to restrict its facilities to their intended purposes.

C. It is Eminently Reasonable to Restrict the Use of the Interiors of Airport Terminals to Airport-Related Activities and to Exclude all Non-Airport Related Activities.

This Court has repeatedly recognized that: "[p]ublic property which is not by tradition or designation a forum for public communication may be reserved by the state 'for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.' " *City Council v. Taxpayers for Vincent, supra*, at pp. 814-815. See also *Perry Ed. Assn. v. Perry Local Ed. Assn., supra*, at pp. 46, 50.

The interiors of the terminal facilities at LAX are not traditional public forums nor have they been opened as public forums. Therefore, any decision by the government operator to restrict the uses of the facilities need only be reasonable and not an attempt to suppress particular views.

Petitioners' Policy is not an attempt to suppress Respondents' particular views. Petitioners have uniformly

restricted the uses of the terminal facilities to airport-related activities and have denied permission to conduct a wide variety of activities involving various views that Petitioners believed were non-airport related. (J.A. 11a, 15a.) For example, Petitioners have denied permission to the Ford Motor Company, the Red Cross, Boy Scouts and Girl Scouts, sports foundations and a variety of religious and political groups to conduct non-airport related activities within the terminals. (J.A. 15a.)

The question, therefore, becomes whether or not it is reasonable to adopt and enforce a policy that restricts the use of the interiors of the terminal facilities at LAX to airport-related activities only and excludes all non-airport related activities, including non-airport related activities that are protected by the First Amendment.

Petitioners, as would any property owner, clearly have the right to limit the uses of their property to those to which it is lawfully dedicated. *Greer v. Spock, supra*, at p. 836; *Perry Ed. Assn. v. Perry Local Ed. Assn., supra*, at p. 46, and those cases cited in each. Petitioners, in adopting and enforcing their "airport-related activities only" Policy, are doing just what this Court has repeatedly stated is constitutionally permissible. Airport property is lawfully dedicated to its intended airport-related purposes. Petitioners are required to restrict the uses of that property to only those that promote and accommodate air commerce and navigation unless they can legitimately conclude that the property is not needed for airport-related purposes. (J.A. 9a-10a.) In both Policy and practice, Petitioners have operated the facilities under their control exclusively as an airport and not as a public forum for general assembly and debate. Petitioners urge this Court to find both the Policy and the practice reasonable.

Respondents assert that "Petitioners have failed to show that an absolute prohibition of First Amendment

activities is reasonable." (Brief in Opposition to Petition for Certiorari, p. 14.) This argument totally mischaracterizes Petitioners' Policy and the Policy that must meet the test of reasonableness.

The Petitioners' Policy can be briefly summarized as follows:

> "The Los Angeles International Airport shall be limited to airport-related uses only except that the sidewalk areas outside the terminal facilities may be used for activities protected by the First Amendment." (J.A. la-6a, 17a.)

In other words, no commercial activity is permitted anywhere on airport property unless it directly aids the traveling public and First Amendment activities are allowed only on the sidewalk areas outside the terminal facilities.

Respondents argue that Petitioners' Policy restricting the uses of the interiors of the terminal facilities to airport-related purposes only and denying Respondents access for religious purposes is unreasonable because "Petitioners have not shown how the exercise of First Amendment activity will in any way interfere with the airport-related purpose." (Brief in Opposition to Petition for Certiorari, p. 15.) Such an argument ignores this Court's teachings that ". . . where government property is not dedicated to open communication *the government may — without further justification — restrict* use to those who participate in the forum's official business." *Perry Ed. Assn. v. Perry Local Ed. Assn., supra,* at p. 52 [Fn. omitted, emphasis added.] See also *City Council v. Taxpayers for Vincent, supra,* at p. 4601, *U.S. Postal Service v. Greenburgh Civic Assn., supra,* at pp. 128-131.

Respondents seem to argue that "the exercise of First Amendment activity . . . is clearly compatible with airport

related functions . . ." and, therefore, the Policy limiting the uses of the terminal facilities to airport-related purposes only is unreasonable. (Brief in Opposition to Petition for Certiorari, p. 16.) Respondents also argue that some First Amendment activities have taken place in the terminals and that fact somehow establishes that the Policy restricting the facilities is unreasonable. (Brief in Opposition to Petition for Certiorari, pp. 16-17.)

These same arguments have been rejected by this Court in *Cornelius v. N.A.A.C.P., supra,* at p. 5121 and in *City Council v. Taxpayers for Vincent, supra,* at p. 814 and n. 31. In *Cornelius,* this Court clearly explained that:

> "The Government's decision to restrict access to a nonpublic forum need only be reasonable; it need not be the most reasonable or the only reasonable limitation. In contrast to a public forum, a finding of strict incompatibility between the nature of the speech or the identity of the speaker and the functioning of the nonpublic forum is not mandated." *Cornelius v. N.A.A.C.P., supra,* at p. 5121. See also *Perry Education Assn. v. Perry Local Educators' Assn., supra,* at p. 46.

In establishing this standard of reasonableness for nonforums, this Court has recognized that a government must have sufficient latitude to make reasonable business decisions if it is to operate its facilities for their intended non-communicative purposes. *U.S. Postal Service v. Greenburgh Civic Assn., supra,* at p. 133.

> ". . . Implicit in the concept of the nonpublic forum is the right to make distinctions in access on the basis of subject matter and speaker identification. These distinctions may be impermissible in a public forum but are inherent and inescapable in the process of limiting a nonpublic forum to activities compatible

> with the intended purpose of the property. The touchstone for evaluating these distinctions is whether they are reasonable in light of the purpose which the forum at issue serves." *Perry Ed. Assn. v. Perry Local Ed. Assn., supra*, at p. 49. [Fn. omitted.]

Furthermore, this Court has recognized that: ". . . regulations of a general character having uniform application throughout . . ." the facility are obviously necessary ". . . to operate as efficiently as possible a system . . ." or, in this case, an airport. *U.S. Postal Service v. Greenburgh Civic Assn., supra*, at p. 133; see also *Perry Ed. Assn. v. Perry Local Ed. Assn., supra*, at pp. 49-53.

This Court has consistently held that the "guarantees of the First Amendment have never meant 'that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please.' " *U.S. Postal Service v. Greenburgh Civic Assn., supra,* at p. 133; *Greer v. Spock, supra*, at p. 836. See also *City Council v. Taxpayers for Vincent, supra*, at p. 791; *Heffron v. ISKCON*, 452 U.S. 640, 652-653, 69 L.Ed.2d 298, 309-310, 101 S. Ct. 2559 (1981). If the law were otherwise, all public facilities would "immediately become Hyde Parks open to every would-be pamphleteer and politician." *Perry Ed. Assn. v. Perry Local Ed. Assn., supra*, at p. 49, n. 9; *U.S. Postal Service v. Greenburgh Civic Assn., supra*, at p. 130, n. 6; *Lehman v. Shaker Heights*, 418 U.S. 298, 304, 41 L.Ed.2d 770, 778, 94 S.Ct. 2714 (1974).

A large number of groups and individuals wish to use the terminal facilities at LAX to achieve their non-airport related objectives. The reasonableness of and justification for the Petitioners' Policy must be analyzed with the recognition that the Airport's functions would be seriously disrupted by the activities of all the groups who wish to use the terminal facilities to expound their views

on a myriad of subjects. *Heffron v. ISKCON, supra*; *City Council v. Taxpayers for Vincent, supra*, at p. 793, *Clark v. Community for Creative Non-Violence*, 52 U.S.L.W. 4987, 4988; 468 U.S. ____, ____; 82 L.Ed.2d 221, 229; 104 S.Ct. ____ (1984).

Thus, it is submitted that limiting the uses of the terminal facilities at LAX to those that directly aid the traveling public is eminently reasonable, is not an attempt to suppress the Respondents' or anyone else's views, and is a legitimate exercise of the Petitioners' right to limit the uses of the interiors of the terminal facilities to those for which LAX was clearly designed, dedicated and intended.

CONCLUSION

Petitioners request that this Court reverse the judgment of the Court of Appeals and hold that the interiors of the terminal facilities at Los Angeles International Airport are not public forums and further that Petitioners' Policy restricting the uses of those facilities to airport-related activities only is constitutional.

Respectfully submitted,

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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On November 20, 1986, I served the within Brief for the Petitioners in re: "The Board of Airport Commissioners vs. Jews for Jesus, Inc." in the United States Supreme Court October Term 1986, No. 86-104;

on the Parties in said action, by placing three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

Andrew Ekonomau
515 Rhodes Haverty Building
134 Peachtree Street N.W.
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All Parties required to be served have been served

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on November 20, 1986, at Los Angeles, California Lawrence T. McManus

LAWRENCE T. McMANUS

Subscribed and Sworn to before me this 20th day of November, 1986.
My Commission Expires Feb 9 1990.

Cecilia Medina

Notary Public